IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Civil Revision Application No.4 of 2006

Shri Suhas Mahadeo Gadgil.... Petitioner

vs

Shri Laxman Govind Panse and ors..Respondents

Mr.A M Joshi for petitioner

CORAM: A.M KHANWILKAR J.

Dated l9.l.2006

P.C:

l. Heard the learned counsel for the petitioner.

2. The only question that needs to be addressed by this court, as has been considered by the lower court, is whether the application preferred by the respondents for revocation of the probate was barred by limitation. The court below on analysis of the entire evidence on record has accepted the contention of the respondents that the respondents had no knowledge about the issuance of the probate on 22.2.l995 till l0.9.200l. That is a finding of fact. If the knowledge is acquired on l0.9.200l, as found by the lower court, with which I am not inclined to interfere, the conclusion reached by the lower court that the limitation would start running from l0.9.200l and the period of 3 years

therefore would be available in terms of Article l37 of the Limitation Act, is un-exceptionable. That view will have to be upheld.

3. The learned counsel for the petitioner, however, criticised that the conclusion, relying on documents at page nos. 49, 50 and 5l being letters dated l8.2.l997, 22.2.l997 and 29.3.l997 respectively to contend that by these letters repeatedly the respondents were made aware of the existence of the Will and inspection of which documents were taken by the respondents as required in law. Suffice it to observe that as rightly concluded by the lower court, these letters do not indicate that the respondents were put to notice about the issuance of the probate on 22.2.l995. The factum of existence of the Will and that of issuance of the probate are two different aspects.It is only on issuance of the probate, the question of applying for revocation of the probate would arise, the limitation would start running from the date of such knowledge as has been rightly recorded by the lower court.

4. The court below has considered these aspects in para 8 as well as para 24 of the impugned judgement

while accepting the stand of the respondents to hold that the application moved by the respondents is within limitation. No fault can be found with the said conclusion reached by the court below.

5. To get over this position, the learned counsel for the petitioner would rely on the Division Bench decision of this court in the case of S.A.Modi vs Mrs T.A Rana and ors, AIR 2004 Bombay 353 to contend that even the factum of knowledge of existence of the Will will have to be reckoned for computing the limitation. I am afraid this decision is not an authority on the said proposition. The observations made in the said decision are relevant to the fact situation of that case before the Division Bench. In the present case, I have already affirmed the finding recorded by the lower court that the respondents acquired knowledge of existence of probate on l0.9.200l which was the starting point of period of limitation.

6. The learned counsel for the petitioner has then relied on the decision of the Supreme Court in the case of Rai Vimal Krishna and ors vs State of Bihar and ors, reported in AIR 2003 SC 2676. Reliance is

placed on the observations that generally speaking the object of giving a public notice is to draw the attention of the persons sought to be affected to the matter notified. There can be no quarrel with the said proposition. The learned counsel for the petitioner has, however, overlooked the other principle stated in the said decision that inspite of such public notice, if the person comes before the court with assertion that he was not aware of such notice and succeeds in establishing that position, mere issuance of public notice would not denude him of his right,if any. Similarly in the case on hand, the respondents approached the lower court with a clear assertion that they had no knowledge about either the issuance of the notice or the probate till l0.9.200l.That assertion has been made good before the lower court and there is no reason to depart from the conclusion reached by the lower court in that behalf. With that finding, it will necessarily follow that the subject application for revocation of probate as filed by the respondents was not barred by limitation.

7. The learned counsel for the petitioner lastly submits that in the impugned judgment sweeping observations have been made by the lower court

which will touch upon the merits of the main application. Suffice it to observe that the discussion in the impugned judgment will have to be understood to mean that it is confined to the issue as to whether the main application filed by the respondents for revocation of probate is within limitation or otherwise.Accordingly, all other issues arising in the main application will have to be decided on their own merits in accordance with law. Understood thus, and as no further issue arises for consideration, in my opinion this application is devoid of any merits. Hence the same is dismissed.